

**IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF TEXAS
MARSHALL DIVISION**

VISTO CORPORATION,)	
)	
Plaintiff,)	
)	Civil Action No.: 2:03-CV-333-TJW
v.)	
)	Before: Hon. T. John Ward
SEVEN NETWORKS, INC.,)	
)	
Defendant.)	
)	
)	
)	

**SEVEN NETWORKS, INC.’S BRIEF REGARDING
JURY INSTRUCTION ON CORROBORATION**

Defendant Seven Networks, Inc. (“Seven”) submits this brief regarding Plaintiff Visto Corporation’s (“Visto”) proposed jury instruction on corroboration. No instruction on corroboration is appropriate in this case, and there should be no instruction that corroboration is required.

Seven notes that the authorities relied upon by Visto (*Woodland Trust v. Flowertree Nursery*, 148 F.3d 1368 (Fed. Cir. 1998) and *Juicy Whip, Inc. Orange Bang, Inc.*, 292 F.3d 728 (Fed. Cir. 2002)) are inapplicable to this case. Both *Woodland Trust* and *Juicy Whip* concern claims of prior knowledge, invention, or use by a party or interested witness supported *solely* by oral testimony. In that context, the Federal Circuit has held that corroboration is required.

In sharp contrast, neither Seven nor its witnesses (Timothy Halvorsen, James Anderson, and James Sikkeland) claim to be prior inventors. Moreover, Messrs. Halvorsen, Anderson, and Sikkeland are neither parties nor interested witnesses. (*See, e.g.*, April 27, 2006 Trial Tr. (A.M.) at 81:5-82:10.) Further, Seven’s invalidity evidence with respect to Lotus Notes is not supported

solely by oral testimony of Seven's witnesses. Instead, Seven presented a mound of Lotus Notes related materials, including, but not limited to:

- (1) Original article describing Lotus Notes replication algorithm (DX 1795);
- (2) the actual diskettes on which the Lotus software was distributed (DX-338, 1783);
- (3) the boxes in which such materials were shipped (*see* April 26, 2006 Trial Tr. (P.M.) at 165:1-10);
- (4) screen shots of the Lotus software (DX 1799, 1800);
- (5) the manuals for the product (including portions describing the use of Lotus Notes with firewalls) (DX 296, 280, 284, 334, 1783, 1790);
- (6) the Grous article and figure (DX 1789) depicting the firewall configuration in use at Lotus and Iris in the applicable time frame;
- (7) Product announcement for NotesPump (DX 130);
- (8) documents concerning Lotus Notes work with NotesPump, again, in the applicable timeframe (DX-130, 334); and
- (9) the testimony of *Visto's witness*, Steven Beckhardt, confirming Messrs. Halvorsen and Sikkeland's testimony regarding the Lotus Business Partner's Forum (*see, e.g.*, April 27, 2006 Trial Tr. (A.M.) at 20:12-22:9) and the Anderson and Sikkeland diagrams (April 27, 2006 Trial Tr. (P.M.) at 2:7-11; 7:11-17; 8:2-6; 142:18-20).

Moreover, in *Thompson, S.A. v. Quixote Corp.*, 166 F.3d 1172, 1175, n.4 (Fed. Cir. 1999), the Federal Circuit held: "Thompson *incorrectly* argues that we extended the corroboration rule to include non-inventors in *Woodland Trust*." (Emphasis added.) That is the very proposition advance by Visto here. During his testimony, Mr. Halvorsen repeatedly stated that he was not claiming to be the inventor of replication (April 27, 2006 Trial Tr. (A.M.) at

79:4-9), and neither Mr. Anderson nor Mr. Sikkeland made that claim. Finally, Messrs. Halvorsen, Anderson, and Sikkeland are not interested witnesses.¹

Accordingly, none of the circumstances in which the corroboration rule might be applicable are present in this case and no corroboration instruction should be given to the jury.

Dated: April 28, 2006

By: /s/ Henry C. Bunsow with permission James C. Pistorino

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¹ Messrs. Halvorsen, Anderson, Sikkeland are neither parties nor employees of parties and have no financial interest in the outcome of this litigation. Moreover, all are merely being compensated at their standard hourly rates for time spent on this matter.

CERTIFICATE OF SERVICE

A true and correct copy of the above and foregoing document was served on the following counsel as follows on this 28th day of April, 2006.

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